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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

COMPETITION POLICY FOR VERTICAL RELATIONS IN GASOLINE RETAILING

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GERMANY

1. Introduction

Unbundling, as a structural measure to solve competition problems, is not implemented in the German Act against Restraints of Competition (ARC). Therefore the Bundeskartellamt does not have any case history in unbundling and its effects in retail fuel markets.¹

The following contribution focuses on presenting an overview of the structure of the fuel markets in Germany.

2. General information²

In 2007 about 35.6 million tons of fuel were sold by more than 14,000 retail fuel outlets. That is 1.8 percent less than in 2006. The fuel-trading companies expect that, although there will be more registered cars, total fuel sales will decrease by 25 percent and the sales of gasoline, in particular, will fall by 40 percent by 2025. The main reasons for the decreasing sales are reported to be higher prices for fuel and more efficient car engines.

Before fuel is sold at retail fuel outlets, it has to be produced (i.e. refined from crude oil), transported and stored. Germany's domestic crude oil production is comparatively small (3.5 million tons in 2006), so most of its demand is imported. In 2006 the total import volume amounted to 109.4 million tons. The most important countries of origin were:

Table 1.

<i>Country</i>	Share of German imports in 2006
Russia	33.7 percent
Norway	16.9 percent
Great Britain	12.1 percent
Libya	11.3 percent
Kazakhstan	7.0 percent
26 other countries	19 percent

Crude oil is transported into Germany by barge or pipeline from the nearby European seaports in Belgium, the Netherlands, France and Italy. In Germany, there are 14 German refineries with annual refining capacities of 119 million tons, i.e. some three percent of the world-wide capacity. Germany is a

¹ Four out of ten cars in Germany run on diesel. Due to the far-reaching similarities of the fuels, their chains of distribution, etc. the details given below cover both, gasoline and diesel (referred to as: markets for fuel).

² The source of this information is the Bundeskartellamt's recent merger decision in case B8 - 134/07 - Shell/HPV, which is available in German at <http://www.bundeskartellamt.de/wDeutsch/download/pdf/Fusion/Fusion08/B8-134-07.pdf>.

net-exporter of refined mineral oil products. For the domestic distribution of fuels, seven major pipelines and 279 tank farms with a total capacity of 68 million cbm are used.

3. Specific Regulations

As elsewhere, retail prices for fuel in Germany have to be displayed in a manner which enables approaching car drivers to easily compare prices. Yet, the public display of prices also makes it very easy for competitors to know the current fuel prices of their competitors in the markets. The integrated oil companies are known to systematically collect data on the prices of their competitors several times a day. With this information they have the opportunity to aggregate and analyse the prices on a nationwide basis. Any change of price by a competitor is therefore known immediately in the market. This ensures high price transparency, at least for the big integrated oil companies.

National law, implementing Directive 2003/30/EC on the promotion of use of biofuels or other renewable fuels for transport, stipulates that biofuels have to be blended into mineral oil derivatives by certain percentages. This blending process affects the transportability and storage suitability of fuel. For quality reasons, the industry is hesitant to transport ready mixed motor fuels by river barges. Thus, the mineral oil derivatives have to be blended afterwards or transported by pipeline. Therefore importers of fuel depend on suppliers of fuel additives and biofuels. The suitability of blended products for storage is also reduced from three to four years (mineral oil products) to only a few months for blended products. Therefore tank farms rely on a relatively fast turnover of their stored fuel.

4. Retail fuel outlets

The retail markets for fuel are divided into outlets of the vertically integrated oil companies (“majors”) and independent outlets. The latter are rather fragmented and are thus not in a position to act as an effective counterbalance to the majors.

4.1 *Vertically integrated oil companies*

In 2007, the five majors, Shell, BP/Aral, Esso (Exxon), Total and ConocoPhilips/Jet, accounted for about 7,400 retail fuel outlets (service stations) in Germany. These service stations are run by sales agents of the integrated companies or by branded resellers. They cover some 50 percent of all outlets, but account for 72.5% of the total amount of fuel sold, revealing the majors’ relative strength in turnover. Their nationwide market shares in 2007 were:

Table 2.

Company	
Aral	23 percent
Shell	22.5 percent
ConocoPhilips	10 percent
Esso (Exxon)	8.5 percent
TOTAL	8.5 percent
<i>Sum</i>	<i>72.5 percent</i>

These high market shares have been fairly stable for years and indicate that there is only limited scope for competition. Consequently, and due to the evidence of a number of facilitating factors, the

Bundeskartellamt in its latest merger decision in the fuel retail markets³ established that the five majors together hold a collective dominant position on the German market for fuel distribution via petrol stations.

Another 10 percent of fuel retail sales are accounted for by three affiliates of vertically integrated oil companies which, however, have most of their production facilities abroad. These are:

Table 3.

Company	<i>Nationwide market share in 2007</i>
Agip	4.5 percent
OMV	3 percent
Orlen	2.5 percent
<i>Sum</i>	<i>10 percent</i>

Agip is a subsidiary of the Italian energy company ENI and has been active in Germany since the 1960s. OMV and Orlen belong to the leading Austrian respectively Polish oil fuel company. They both entered the German markets as a result of divestiture requirements in the Bundeskartellamt's earlier merger decisions in the cases BP/Aral and Shell/DEA in 2001.⁴

Vertical integration, spanning the chain from production/refinery to retail at the pump, gives fuel companies, especially the majors, a high degree of flexibility in allocating costs at different points in the processing chain as well as in setting prices and adjusting them quickly over large sales areas. Thus, while prices at the pump, across the spectrum of the firms in the markets, are transparent for any observer (but especially for the integrated fuel companies, cf. above), the relevant factors, occurring somewhere along the processing chain, which determine the price-setting of an individual vertically integrated fuel firm are hard to discern from the outside.

4.2 Other Competitors

Several small and medium-sized companies are only active on one level of the trade chain. Some of them run service stations which are independent of the majors (so-called "white pumps" or "freie Tankstellen" in German). Some of the medium-sized companies are organized in the AVIA brand and purchasing community. A significant number of the independent retailers use the common brand of their association called Bundesverband Freier Tankstellen e.V. (bft). Bft, however, does not constitute a single economic entity; it is a business association of several hundred small independent operators.

5. Upstream market levels

5.1 Vertically integrated oil companies

On the upstream markets the links between most of the vertically integrated oil companies are very close. In particular, joint ventures are operated for refineries, tank farms and pipelines (not retail fuel outlets, however).

³ See case B8 - 134/07 - Shell/Hanseatic. The decision is available in German on the Bundeskartellamt's website at <http://www.bundeskartellamt.de/wDeutsch/download/pdf/Fusion/Fusion08/B8-134-07.pdf>

⁴ See cases B8 - 120/01 - Shell/DEA and B8 - 130/01 BP/E.ON (ARAL). The decisions are available in German on the Bundeskartellamt's website at <http://www.bundeskartellamt.de/wDeutsch/archiv/EntschFusArchiv/2001/EntschFus01.php>.

5.1.1 Refineries

Each of the big five integrated oil companies offers its products nationwide, but not every one of those companies has got refineries in every part of the country. However, all German refineries are in solitary or common possession of the vertically integrated oil companies.

5.1.2 Pipelines

The German refineries receive most of their crude oil from abroad. The commodity is transported by barge and pipeline. There are also pipelines in Germany that transport fuel to or between the tank farms. The most important pipelines for crude oil and all the pipelines for gasoline are jointly owned by the vertically integrated oil companies.

5.1.3 Tank farms

The gasoline produced by the refineries is stored to a large extent in tank farms. These are either run by the vertically integrated companies or by specialised independent companies. As diesel fuel and gasoline (each separately) are homogeneous products, there is no need to store the fuel of different companies in separate tanks. Diesel and gasoline are given their respective brand specifics by blending with additives. The additives are only added when the fuel leaves the tank farm.

5.1.4 Swaps

The big vertically integrated oil companies operate a system of fuel exchange between their tank farms. They also share some of the independent storage facilities by means of common contracts. The economic effect is a reduction of costs for nationwide access to fuel. However, this system also has the effect of increasing transparency among the major companies. They are aware of any change in the amount of fuel sold by a single supplier.

5.2 Other Competitors

There are no refineries or major pipelines that are operated independently of the vertically integrated oil companies.

There are some companies running independent tank farms, but only as service providers vis-à-vis mineral oil product wholesalers.

The only opportunity for importers to buy fuel at competitive transport prices without using the facilities of the vertically integrated oil companies is transport by barge along the river Rhine from the seaports of Amsterdam, Rotterdam and Antwerp. The problems with the transport of ready mixed fuel on barges have already been mentioned.

6. Sector Inquiry of the Bundeskartellamt

The Bundeskartellamt started a sector inquiry this summer to gain a better understanding of the fuel markets in Germany. It aims to assess whether the fuel markets in Germany are functioning properly.⁵

⁵ See the press release in German on the Bundeskartellamt's website at http://www.bundeskartellamt.de/wDeutsch/aktuelles/presse/2008_05_28_II.php

As a first step, the sector inquiry has started to examine the general market conditions and to identify the possible distortions of competition. So far there have been no results that can be reported.

7. Unbundling of the Retail Fuel Outlets

With the present knowledge about the fuel markets in Germany it cannot be reliably said that unbundling the retail fuel outlets from the major vertically integrated oil companies would have a specific effect (i.e. on the prices for fuel) on the markets.

Generally, unbundling can be an appropriate instrument of active competition policy to solve competition problems on static markets with high concentration. In particular, vertical unbundling may be an effective measure to reduce the potential for discrimination or obstruction along the value chain in downstream markets.

However, unbundling by the State is not adopted as a measure to remedy competition problems in the German ARC and there are no plans to do so.

Any attempt to introduce measures allowing for unbundling provisions would likely be challenged as serious infringements of the basic rights of property and free enterprise and would have to fulfil the condition of commensurability.

